

ESTTA Tracking number: **ESTTA495935**

Filing date: **09/21/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91171281
Party	Plaintiff PomWonderful LLC
Correspondence Address	DANIELLE M CRIONA ROLL LAW FIRM PC 11444 WEST OLYMPIC BOULEVARD LOS ANGELES, CA 90064 UNITED STATES dcriona@roll.com, sweiner@roll.com, mrivera@roll.com, tackerman@roll.com
Submission	Other Motions/Papers
Filer's Name	Danielle M. Criona
Filer's e-mail	dcriona@roll.com, takerman@roll.com, mrivera@roll.com
Signature	/s/ Danielle M. Criona /s/
Date	09/21/2012
Attachments	Decl. of D. Criona with Exhibits Pt. 2_Part2.pdf (43 pages)(541921 bytes)

forth herein on the ground that ~~information designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL~~Confidential Information or Highly Confidential Information has/had been:

- a) available to the public at the time of its production hereunder;
- b) available to the public after the time of its production through no act, or failure to act, on behalf of the receiving ~~party~~Party, its counsel, representatives or experts;
- c) known to such receiving ~~party~~Party, or shown to have been independently developed by such receiving ~~party~~Party, prior to its production herein without use or benefit of the information;
- d) obtained outside of this action by such receiving ~~party~~Party from the producing ~~party~~Party without having been designated as Confidential Information or Highly Confidential Information; provided, however, that this provision does not negate any pre-existing obligation of confidentiality;
- e) obtained by such receiving ~~party~~Party after the time of disclosure hereunder from a third party having the right to disclose the same; or
- f) previously produced, disclosed, and/or provided by the producing ~~party~~Party to the receiving ~~party~~Party or any third party without an obligation of confidentiality.

3) Confidential or Highly Confidential Information Filed with the Board. To the extent that any materials or information subject to this Order (or any pleading, motion or memorandum referring to them) are proposed to be filed or are filed with the Board, those materials and ~~papers~~information, or any portion thereof which discloses Confidential Information or Highly Confidential Information, shall be filed under seal (by the filing ~~party~~Party) with the Board in an envelope marked "SEALED PURSUANT TO ORDER OF BOARD DATED _____", together with an appropriate interim sealing motion and a

statement substantially in the following form:

“This envelope, containing documents which are filed in this case by (name of party), is not to be opened or the contents thereof to be displayed or revealed except by Order of TTAB or consent of the parties to this action.”

Even if the filing partyParty believes that the materials or information subject to this Order are not properly classified as Confidential Information or Highly Confidential Information, the filing partyParty shall file an appropriate interim sealing motion; provided, however, that the filing of the interim sealing motion shall be wholly without prejudice to the filing partyParty's rights under paragraph of this Confidentiality Order.

4) Party Seeking Greater Protection Must Obtain Further Order. No information or materials may be withheld from discovery on the ground that the material or information to be disclosed requires protection greater than that afforded by paragraph 1 of this Order unless the partyParty claiming a need for greater protection moves for an order providing such special protection pursuant to Fed. R. Civ. P. 26(c). This Order is without prejudice to the right of any partyParty to seek further or additional protection of information for which the protection of this orderOrder is not believed by such partyParty to be adequate. Nothing in this Order shall be deemed to bar or preclude any producing partyParty from seeking such additional protection, including, without limitation, an order that certain information may not be discovered at all.

5) Challenging Designation of Confidentiality. A designation of confidentiality may be challenged upon motion. The burden of proving the confidentiality of designated information or material remains with the partyParty asserting such confidentiality. The process for making such an objection and for resolving the dispute shall be as follows:

a) The objecting partyParty shall notify the producing partyParty in writing as to its

objection(s) to the designations. This notice shall include, at a minimum, a specific identification of the designated material objected to as well as the reason(s) for the objection.

b) The objecting ~~party~~Party shall thereafter have the burden of conferring with the producing ~~party~~Party claiming protection (as well as any other interested party) in a good faith effort to resolve the dispute.

c) Failing agreement, the objecting ~~party~~Party may bring a noticed motion to the Board for a ruling that the discovery material or information sought to be protected as Confidential Information or Highly Confidential Information is not entitled to such designation. The producing ~~party~~Party bears the burden to establish that such discovery material is Confidential Information or Highly Confidential Information and is entitled to such protection under this Order.

d) Notwithstanding any such challenge to ~~the designation of material as Confidential Information or Highly Confidential Information~~, all such material and information so designated shall be treated as such and shall be subject to the provisions of this Order until one of the following occurs: (i) the ~~party who~~Party that designated the ~~material as Confidential Information or Highly Confidential Information~~ withdraws such designation in writing; or (ii) the Board rules that the designation is not proper and that the designation be removed.

6) Errors in Designation. A producing ~~party~~Party that inadvertently fails to designate ~~an item~~material or information pursuant to this Protective Order as Confidential Information or Highly Confidential Information at the time of the production shall make a correction promptly, but in no event more than fifteen (15) days, after first becoming aware of

such error or as soon thereafter as is commercially reasonable. Such correction and notice thereof shall be made in writing accompanied by substitute copies of each item, appropriately designated. Those individuals who reviewed the ~~documents~~material or information prior to notice of the failure to designate by the producing ~~party~~Party shall, to the extent reasonably feasible, return to the producing ~~party~~Party or ensure destruction of all copies of such undesignated ~~documents~~materials or information and shall honor the provisions of this ~~Protective~~ Order with respect to the use and disclosure of any Confidential Information or Highly Confidential Information contained in the undesignated ~~documents~~material or information from and after the date of designation. The ~~party~~Party receiving the ~~discovery~~information or material that the producing ~~party~~Party inadvertently failed to designate as Confidential Information or Highly Confidential Information shall not be in breach of this Order for any use made of such ~~discovery~~material or information prior to receiving notice of the inadvertent failure to designate.

7) Improper Disclosure. If information or material designated pursuant to this ~~Protective~~ Order is disclosed to any person other than in the manner authorized by this ~~Protective~~ Order, the ~~party~~Party responsible for this disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the designating ~~party~~Party or its counsel, without prejudice to other rights and remedies of the designating ~~party~~Party, and shall make every effort to prevent further improper disclosure and to ensure that no further or greater unauthorized disclosure and/or use thereof is made.

8) Inadvertent Production. Counsel shall make their best efforts to identify materials and information protected by the attorney-client privilege or the work product doctrine prior to the disclosure of any such materials or information. The inadvertent production of any ~~document~~material or ~~thing~~information shall be without prejudice to any claim that such material

is protected by the attorney-client privilege or protected from discovery as work product and no producing partyParty shall be held to have waived any rights thereunder by inadvertent production. If a producing partyParty discovers that materials or information protected by the attorney-client privilege or work product doctrine have been inadvertently produced, counsel for the producing partyParty shall promptly give written notice to counsel for the receiving partyParty. The receiving partyParty shall take prompt steps to ensure that all known copies of such material and information are returned to the producing partyParty within five (5) business days of such request or as soon thereafter as is reasonable. Any notes or summaries, other than those expressly permitted under this section, referring to or relating to any such inadvertently produced information subject to a claim of immunity or privilege shall be destroyed. The receiving partyParty may afterwards contest such claims of privilege or work product as if the materials had not been produced, but shall not assert that a waiver occurred as a result of the production.:-

9) Return of Confidential Material at Conclusion of Litigation. At the conclusion of the litigationAction, all ~~material treated as~~ Confidential Information or Highly Confidential Information under this Order and not received in evidence, and all copies thereof, shall be returned to the originating partyParty within ninety (90) calendar days. If the partiesParties so stipulate, the materials may be destroyed and certified destroyed instead of being returned. Counsel for the parties may only retain one copy of pleadings filed for archival purposes, but may not otherwise keep any other Confidential Information or Highly Confidential Information. The Board may return to counsel for the partiesParties, or destroy, any sealed material at the end of the litigationAction, including any appeals. ~~Each party's obligation to destroy or return materials stored in electronic format shall be limited to electronic data that is reasonably~~

accessible to the party, and shall not extend to offsite backup or archival media.

10) Miscellaneous Provisions.

a) The entry of this Order shall not be construed as a waiver of any right to object to the furnishing of information or material in response to discovery and, except as expressly provided, shall not relieve any party either Party of the obligation of producing information or material in the course of discovery.

b) If at any time Confidential Information or Highly Confidential Information is subpoenaed by any ~~TTAB~~, arbitral, administrative or legislative body, or the TTAB, the person to whom the subpoena or other request is directed shall immediately give written notice thereof to counsel for every party who of the Party that has produced such Confidential Information or Highly Confidential Information and shall provide ~~each such party~~ the Party with an opportunity to object to the production of such Confidential Information or Highly Confidential Information. If the producing party Party does not move for a protective order within ten (10) calendar days of the date written notice is given, the party Party to whom the referenced subpoena is directed may produce, on or after the date set for production in the subpoena but not prior to the end of the ten (10) calendar day notice period, such material in response thereto.

c) Counsel for any party to this Order of either Party shall have the right to exclude from depositions, other than the deponent and the reporter, any person who is not authorized under this Protective Order to receive materials or information designated as ~~CONFIDENTIAL~~ or ~~HIGHLY CONFIDENTIAL~~ ~~ATTORNEYS' EYES ONLY~~ Confidential Information or Highly Confidential Information. Such right of exclusion shall be applicable only during periods of examination or testimony directed to Confidential Information or Highly Confidential Information, as applicable.

d) All notices required by any paragraph of this Order may be made by facsimile and/or email to counsel representing the noticed ~~party~~Party, however, notice in those manners is not effective without evidence of receipt of the facsimile and/or email by the noticed ~~party~~Party's counsel. The date by which a ~~party~~Party receiving notice shall respond or otherwise take action shall be computed from the date of receipt of the notice. Any of the notice requirements herein may be waived in whole or in part, but only in a writing signed by an ~~attorney~~counsel for the ~~Producing~~producing Party.

e) Nothing in this Order shall bar or otherwise restrict counsel from rendering advice to his or her client with respect to this ~~action~~Action and, in the course thereof, relying in a general way upon his or her examination of Highly Confidential Information produced or exchanged in this ~~action~~Action; provided, however, that in rendering such advice and in otherwise communicating with his or her client, the ~~attorney~~counsel shall not disclose the contents of Highly Confidential Information produced by any ~~other party or non-party~~.

f) Execution of this Order shall not constitute a waiver of the right of ~~any party~~either Party to claim in this ~~action~~Action or otherwise that any documents, communications, or any portion thereof, are privileged or otherwise non-discoverable, or are not admissible in evidence in this ~~action~~Action or any other proceeding.

g) All persons receiving Confidential Information or Highly Confidential Information are enjoined from producing them to any other persons, except in conformance with this Order. Each individual who receives Confidential Information or Highly Confidential Information agrees to subject himself/herself to the jurisdiction of this Board for the purpose of any proceedings relating to the performance under, compliance with or violation of this Order.

h) The ~~parties~~Parties agree that the terms of this ~~Protective~~ Order shall survive and

remain in effect after the termination of this ~~action~~Action. The Board shall retain jurisdiction to hear disputes arising out of this Order.

i) ~~Any party~~A Party may move at any time to modify the terms of this ~~Protective~~ Order. A ~~party~~Party seeking to modify this Order shall request only the minimum modification as is reasonably necessary to address the grounds upon which its motion to modify is based.

j) Any headings used in this ~~Protective-Order~~ are for reference purpose only and are not to be used to construe or limit the meaning of any provision.

k) This ~~Protective~~ Order may be executed in any number of counterparts, all of which, upon completed execution thereof by all ~~parties, collectively~~the Parties, together shall be deemed to constitute one original.

SEEN AND AGREED:

Dated: ~~July~~August __, 20092012

Dated: ~~July~~August __, 20092012

~~Douglas N. Masters~~Danielle M. Criona
~~Sharon A. Ceresnie~~ROLL LAW GROUP P.C.
ENGLISH, LLP
~~LOEB & LOEB LLP~~11444 W. Olympic Blvd.
~~321 North Clark Street, Suite 2300~~Los Angeles, CA 90064
36th Floor
~~Chicago, Illinois 60654~~
06103
(312) 464-3100
(312) 364-3111 (fax)

Attorneys for PomWonderful LLC

Mark D. Giarratana
MCCARTER &

CityPlace I
185 Asylum Street,

Hartford, Connecticut

(860) 275-6700
(860) 275-3397 (fax)

Attorneys for Jarrow Formulas, Inc.

SO ORDERED:

Judge

EXHIBIT A

WHEREAS, I, _____, am an employee of _____ and may have cause to examine materials that are designated "~~CONFIDENTIAL~~" or "~~HIGHLY CONFIDENTIAL~~" Confidential Information or Highly Confidential Information pursuant to the foregoing ~~Protective Order~~. I have read and understand the provisions of the foregoing ~~Protective Order~~.

NOW, THEREFORE, I hereby consent to be bound by the provisions of the ~~Protective Order~~ and to abide by all its terms with respect to materials and information deemed confidential in this proceeding.

Dated: _____

Name:

Address:

EXHIBIT B

[SEE NEXT PAGE]

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

POMWONDERFUL LLC

Opposer,

v.

JARROW FORMULAS, INC.

Applicant.

Consolidated Opposition No. 91171281

Marks: POMAMAZING (78/751,860)
POMEGREAT (78/635,298)
POMESYNERGY (78/727,050)
POMGUARD (78/829,128)
POMOPTIMIZER (78/829,152)
POMEZOTIC (77/294,016)

ACKNOWLEDGEMENT

I, _____, declare as follows:

1. My present employer is _____.
2. My business address is _____.
3. My occupation is _____.
4. In the past 12 months, I have consulted and/or served as an expert for the following companies (attach additional sheets if necessary): _____.
5. I have reviewed a copy of the ~~Protective~~ Order in this action Action, and I understand and agree to be bound by its terms and provisions.
6. I will hold in confidence, will not disclose to anyone not qualified or cleared under the Protective Order, and will use only for approved purposes in this litigation, any "Confidential" Information or "Highly Confidential" information or documents which are disclosed to me Information, as such terms are defined in the Order.
7. I will return all "Confidential" Information or "Highly Confidential" information and documents Information that come into my possession, and all ~~documents~~ materials or

~~things~~information which I prepare relating thereto, to ~~outside litigation counsel for the party~~Party
by whom I am employed or retained.

8. I hereby submit myself to the jurisdiction of the United States Patent and Trademark Office, Trademark Trial and Appeal Board for the purposes of enforcement of the ~~Protective~~
Order in this ~~litigation~~Action.

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Name:

Address:

Document comparison by Workshare Compare on Tuesday, August 28, 2012
3:35:24 PM

Input:	
Document 1 ID	file://L:\WDOXS\New\RLG\TRADEMARKS\066711.DOC
Description	066711
Document 2 ID	file://L:\WDOXS\New\RLG\TRADEMARKS\066710.DOC
Description	066710
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	230
Deletions	216
Moved from	8
Moved to	8
Style change	0
Format changed	0
Total changes	462

EXHIBIT 2

From: Akerman, Tammy
Sent: Tuesday, September 04, 2012 4:42 PM
To: 'Ewen, David'
Cc: Criona, Danielle; Giarratana, Mark
Subject: Re: PomWonderful/Jarrow Oppositions: protective order and discovery issues
Attachments: Jarrow protective order (066710).DOC; compare jarrow (067025).DOC

David,

I wanted to be in touch with you regarding discovery matters in this case since discovery closes on 10/23.

POM would like to comply with its discovery obligations, and it has thousands of documents that it is waiting to produce subject to finalizing the protective order, which we agreed to file with the TTAB by 9/17. We expect that these documents will satisfy the issues related to the document production and interrogatory responses you raised in your letter dated August 8, 2012. Please forward your comments to us on the protective order so that we can finalize it. I have re-attached a draft of the protective order and a redline here for your convenience.

In addition, I write to follow up on our letter to you dated August 14, 2012. We have not received a response to our letter, and we have not received any responses to the interrogatories or requests for production. I would like to request a call with you to meet and confer regarding the responses and when we can expect them given that close of discovery is fast approaching and we need to prepare for and schedule depositions.

Thanks,
Tammy

From: Akerman, Tammy
Sent: Tuesday, August 28, 2012 3:51 PM
To: 'Ewen, David'; Criona, Danielle
Cc: Giarratana, Mark
Subject: RE: PomWonderful/Jarrow Oppositions: redlined protective order

David,

As promised, attached please find a revised protective order as well as a redline against the previous version. I noted that the original was drafted by Loeb and Loeb so most of the changes are refinements to language and definitions but please let me know if you disagree with any of the changes or have any additional comments. My main goal was to try to make it cleaner throughout.

Thanks,
Tammy

From: Ewen, David [mailto:DEwen@McCarter.com]
Sent: Thursday, August 23, 2012 3:55 PM
To: Criona, Danielle
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

Attached is your service copy of the motion to extend, as filed with the Board.

Best,
David

From: Criona, Danielle [mailto:DCriona@Roll.com]
Sent: Thursday, August 23, 2012 5:37 PM
To: Ewen, David
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Thanks David. This is fine, you may insert my electronic signature and file it. Thank you for taking the lead on this.

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

From: Ewen, David [mailto:DEwen@McCarter.com]
Sent: Thursday, August 23, 2012 2:28 PM
To: Criona, Danielle
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

The attached contains our revisions to the draft you provided. Upon your confirmation, I will file the Motion with the Board.

Best,
David

From: Criona, Danielle [mailto:DCriona@Roll.com]
Sent: Thursday, August 23, 2012 2:35 PM
To: Ewen, David
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

David,

Here are my edits. I don't think we need to explain in as much detail as you had and think we need to be mindful of the confidential nature of the settlement agreement. Let me know what you think of these – the changes are tracked.

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

From: Ewen, David [<mailto:DEwen@McCarter.com>]
Sent: Thursday, August 23, 2012 9:16 AM
To: Criona, Danielle
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

The draft Motion and Status Report is attached for your review. The yellow highlighted portions are proposed redactions. We look forward to your comments.

Best,
David

From: Ewen, David
Sent: Wednesday, August 22, 2012 5:50 PM
To: 'Criona, Danielle'
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

My apologies for the delay. We've fallen a bit behind schedule due to a hectic week, but will get a draft to you tomorrow, in time for filing before Friday.

Best,
David

From: Criona, Danielle [<mailto:DCriona@Roll.com>]
Sent: Wednesday, August 22, 2012 5:14 PM
To: Ewen, David
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions
Importance: High

David,

Not to be a pest, but I also note that discovery officially closes on Friday, August 24th. I believe we should be filing our consent motion prior to this date. Can you please send us a draft by tomorrow?

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

From: Ewen, David [<mailto:DEwen@McCarter.com>]
Sent: Friday, August 17, 2012 12:16 PM
To: Criona, Danielle
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

We will get the draft to you by Monday, if not sooner.

David

**MCCARTER
& ENGLISH**
ATTORNEYS AT LAW

David Ewen // Associate
McCARTER & ENGLISH, LLP

CityPlace I, 185 Asylum Street // Hartford, Connecticut 06103-3495
Direct: 860-275-6733
DEwen@mccarter.com // www.mccarter.com

BOSTON // HARTFORD // NEW YORK // NEWARK // PHILADELPHIA // STAMFORD // WILMINGTON

From: Criona, Danielle [<mailto:DCriona@Roll.com>]
Sent: Friday, August 17, 2012 3:11 PM
To: Ewen, David
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

David,

I haven't seen your draft – are you sending it soon?

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

From: Ewen, David [<mailto:DEwen@McCarter.com>]
Sent: Monday, August 13, 2012 12:45 PM
To: Criona, Danielle
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

Yes, we confirm that the proposed schedule includes postponing the August 24th depositions. We will get back to you shortly with a draft.

As to settlement, we appreciate you explaining the rationale for PomWonderful's new position on settlement, but hope that the settlement dialogue will nevertheless remain open. Also, it seems that the parties' proposed settlement remains viable with respect to the "JFI Pome Marks" (which were not subject to the assignment/license-back provisions of the draft

agreement) and that this aspect of the dispute can still be resolved. Please let us know your thoughts.

Best,
David

From: Criona, Danielle [<mailto:DCriona@Roll.com>]
Sent: Monday, August 13, 2012 3:32 PM
To: Ewen, David
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

David,

Assuming by agreeing to this schedule both noticed depositions for August 24th will be postponed then we are fine with this schedule. Please confirm.

Thank you for taking the lead on drafting a status report and motion. I will look for the draft in the coming days.

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

From: Ewen, David [<mailto:DEwen@McCarter.com>]
Sent: Wednesday, August 08, 2012 2:27 PM
To: Criona, Danielle
Cc: Giarratana, Mark
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

Further to my email below, since the parties have devoted their time almost exclusively to the prospect of settlement, we do not believe either will be in a suitable position to depose the other's witness on August 24, 2012. We are amenable to jointly seeking an extension from the Board, and propose the following schedule:

- 9/17/12 Parties to file protective order with Board.
- 10/23/12 Parties to respond to outstanding discovery requests and produce documents.
- 11/22 - 12/22/12 Parties to make witnesses available for initial deposition (follow-up discovery may take place in following month)
- 12/22/12 Expert disclosures due
- 1/21/13 Discovery closes

Trial dates and the briefing schedule will follow as normal. Please let us have your comments on the above at your earliest convenience, and we will forward a draft Status Report and Motion to Extend for your review and input.

Regards,
David

From: Ewen, David
Sent: Wednesday, August 08, 2012 4:46 PM
To: 'DCriona@Roll.com'
Cc: Giarratana, Mark
Subject: PomWonderful/Jarrow Oppositions

Dear Danielle,

Please see the attached letter and enclosures regarding these oppositions.

Regards,
David

**McCARTER
& ENGLISH**
ATTORNEYS AT LAW

David Ewen //
Associate
McCARTER &
ENGLISH, LLP

CityPlace I, 185
Asylum Street //
Hartford, Connecticut
06103-3495
Direct: 860-275-6733
DEwen@mccarter.com
// www.mccarter.com

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EXHIBIT 3

From: Criona, Danielle
Sent: Wednesday, September 12, 2012 4:25 PM
To: Ewen, David
Cc: Akerman, Tammy
Subject: Issue re In House Counsel

David,

As we discussed, when I first came on board and began working on this case, the legal group was considered "in house counsel" – employed by Roll International. Now, the structure has changed and we are part of our own Law Group (Roll Law Group PC) and are more akin to outside counsel.

The reality is that either way, attorneys are always on their honor not to share highly confidential AEO information with their clients. Just because you are officially outside counsel to Jarrow, I have to trust that you will not share AEO information with Jarrow.

Danielle M. Criona, Esq. | Roll Law Group PC | Intellectual Property Counsel
11444 W Olympic Blvd. | Los Angeles, CA 90064 | 310.966.8771 | Fax 310.966.8810

CONFIDENTIALITY NOTE: This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). If you believe that you have received this email in error, please notify the sender.

EXHIBIT 4

From: Criona, Danielle
Sent: Thursday, September 13, 2012 11:46 AM
To: 'DEwen@McCarter.com'
Subject: RE: Issue re In House Counsel

David,

Actually, Roll International doesn't exist anymore – it is now Roll Global.

Roll Law Group PC is completely unaffiliated with Roll Global, not owned in whole or in part by Roll Global. Roll Law Group PC is a legal entity qualified to practice law by the CA State Bar – it began on January 1, 2010.

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

From: Ewen, David [<mailto:DEwen@McCarter.com>]
Sent: Thursday, September 13, 2012 11:35 AM
To: Criona, Danielle
Cc: Akerman, Tammy
Subject: RE: Issue re In House Counsel

Danielle,

Thanks for your email. Perhaps you addressed this yesterday evening, but is Roll Law Group PC owned in whole or in part by Roll International?

Thanks,
David

From: Criona, Danielle [<mailto:DCriona@Roll.com>]
Sent: Wednesday, September 12, 2012 7:25 PM
To: Ewen, David
Cc: Akerman, Tammy
Subject: Issue re In House Counsel

David,

As we discussed, when I first came on board and began working on this case, the legal group was considered “in house counsel” – employed by Roll International. Now, the structure has changed and we are part of our own Law Group (Roll Law Group PC) and are more akin to outside counsel.

The reality is that either way, attorneys are always on their honor not to share highly confidential AEO information with their clients. Just because you are officially outside counsel to Jarrow, I have to trust that you will not share AEO information with Jarrow.

Danielle M. Criona, Esq. | Roll Law Group PC | Intellectual Property Counsel
11444 W Olympic Blvd. | Los Angeles, CA 90064 | 310.966.8771 | Fax 310.966.8810

CONFIDENTIALITY NOTE: This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). If you believe that you have received this email in error, please notify the sender.

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EXHIBIT 5

From: Ewen, David [DEwen@McCarter.com]
Sent: Tuesday, September 18, 2012 9:00 AM
To: Criona, Danielle
Cc: Giarratana, Mark
Subject: RE: ESTTA. Stipulated/Consent Motion to Extend confirmation receipt ID: ESTTA494932
Attachments: Change-Pro Redline - 14127765-v1-Jarrow protective order (066710) (rev M&E 9.17.2012) and 14127765-v-c.DOC; Jarrow protective order (066710) (rev M&E 9.17.2012)-c.DOC

Danielle,

Attached is a redline showing our revisions to the draft you last provided, as well as a clean copy. We'll look forward to your comments.

David

-----Original Message-----

From: Criona, Danielle [<mailto:DCriona@Roll.com>]
Sent: Monday, September 17, 2012 6:22 PM
To: Ewen, David
Cc: Giarratana, Mark
Subject: FW: ESTTA. Stipulated/Consent Motion to Extend confirmation receipt ID: ESTTA494932

Here it is. We look forward to getting this done by Friday and will look for your draft tonight. We will get our draft to you by tomorrow evening.

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

-----Original Message-----

From: estta-server@uspto.gov [<mailto:estta-server@uspto.gov>]
Sent: Monday, September 17, 2012 3:20 PM
To: Criona, Danielle; Rivera, Mark; Akerman, Tammy
Subject: ESTTA. Stipulated/Consent Motion to Extend confirmation receipt ID: ESTTA494932

Opposition No.: 91171281

Tracking No: ESTTA494932

ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

We have received your Opposition No.: 91171281 submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.

If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.

The status of any Board proceeding may be checked using TTABVUE which is available at <http://ttabvue.uspto.gov>. Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.

The Board will consider and take appropriate action on your filing in due course.

Printable version of your request is attached to this e-mail

ESTTA server at <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA494932

Filing date: 09/17/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding: 91171281

Party: Plaintiff

PomWonderful LLC

Correspondence Address: DANIELLE M CRIONA ROLL LAW FIRM PC

11444 WEST OLYMPIC BOULEVARD

LOS ANGELES, CA 90064

UNITED STATES

dcriona@roll.com, sweiner@roll.com Phone:

Submission: Stipulated/Consent Motion to Extend

Filer's Name: Danielle M Criona

Filer's e-mail: dcriona@roll.com, mriviera@roll.com, tackerman@roll.com

Signature: /s/ Danielle M Criona /s/

Date: 09/17/2012

Attachments: Consent Motion to Extend Time to File PO.pdf (3 pages)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

POMWONDERFUL LLC	Consolidated Opposition No. 91171281
Opposer,	
v.	Marks: POMAMAZING (78/751,860)
	POMEGREAT (78/635,298)
JARROW FORMULAS, INC.	POMESYNERGY (78/727,050)
	POMGUARD (78/829,128)
Applicant.	POMOPTIMIZER (78/829,152)
	POMEZOTIC (77/294,016)

**STIPULATED PROTECTIVE ORDER REGARDING
CONFIDENTIALITY OF DISCOVERY MATERIAL**

Whereas, the parties to the above-captioned action (the “Action”), POMWonderful LLC and Jarrow Formulas, Inc. (each, a “Party” and together, the “Parties”), have stipulated that the use and disclosure of certain materialmaterials and information exchanged by the Parties, or provided by or obtained from non-parties in this Action, be ~~treated as confidential~~restricted pursuant to the following terms of this Protective Order (the “Order”).

This Order does not affect the burden of proof that must be met by a Party seeking to protect ~~confidential documents~~such materials or information that is filed with the U.S. Patent and Trademark Office, Trademark Trial and Appeals Board (the “Board”) in the records in this Action. A Party seeking to protect such materials and information to be filed in the public records must prove that the ~~documents~~materials or information meets the standards set forth in relevant authority. In meeting that burden, a Party may not rely on its own designation of ~~material~~materials or information as “Confidential” or “~~Highly Confidential~~Trade Secret/Commercially Sensitive” under this Order.

{066710.1}

Accordingly, it is this _____ day of _____, 2012, by the Board,
ORDERED:

1) Designation of Discovery Materials as Confidential or Highly Confidential Trade Secret/Commercially Sensitive. All documents, depositions, pleadings, exhibits and all other material or information subject to discovery in this Action, including but not limited to materials or information produced in the course of discovery, all answers to interrogatories, all answers to requests for admission, all responses to requests for production of documents, all deposition testimony and deposition exhibits, and all expert testimony and reports, as well as testimony adduced in this Action, exhibits, matters in evidence and any other material or information used or disclosed related to this Action, hereafter furnished, directly or indirectly, by or on behalf of any Party, person or witness in connection with this Action, ~~shall be subject to this Order concerning~~ may be considered confidential, or as trade secret/commercially sensitive. A Party may seek to protect such materials and information, as set forth below by employing one of the following designations:

a) "Confidential Information." Information and materials shall be designated as confidential by placing or affixing the words "**CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**" on the information and materials in a manner which will not interfere with ~~its~~ their legibility.

b) ~~a)~~ "Trade Secret/Commercially Sensitive Information": Information and materials shall be designated as ~~highly confidential~~ trade secret/commercially sensitive by placing or affixing the words "~~HIGHLY CONFIDENTIAL – TRADE SECRET/COMMERCIALLY SENSITIVE –~~ ATTORNEYS' EYES ONLY –

SUBJECT TO PROTECTIVE ORDER” on the information or materials, in a manner which will not interfere with their legibility. ~~A Party that provides material and information may designate it as Confidential Information or Highly Confidential Information if that Party believes in good faith that such information or materials come within the meaning of Fed. R. Civ. P. 26(c)(1)(G), which shall include, but not be limited to, the following categories of information and materials (collectively, the “Categories”):~~

- ~~i) confidential future business, marketing or sales plans, including specific business plans, strategies and projections, future marketing plans and strategies, future sales plans and strategies, forward-looking pricing strategies; the development of new product concepts, extensions of existing product lines, and other similar forward-looking information that is kept confidential by the Party;~~
- ~~ii) specific financial information at a level of detail beyond that disclosed in sources available to the public;~~
- ~~iii) results of research, studies or other complex analyses that the Parties expended money to develop or obtain and that would be useful to current or potential competitors. This category includes, among other things, consumer research studies that the parties commissioned at considerable expense from third parties;~~
- ~~iv) complex market analyses provided by third parties under contracts with non-disclosure clauses, and analyses of other competitors in the market;~~
- ~~v) terms of contracts with the companies’ suppliers or customers that could be used by current or potential competitors in their own negotiations with suppliers or customers;~~
- ~~vi) specific proprietary product formulas or proprietary manufacturing processes;~~
- ~~vii) product concepts in development that have not been launched into the market;~~
- ~~viii) private information about any officer, employee or other individual; or~~

~~ix) commercially sensitive information regarding the development, production, marketing, branding, sales or promotion of the Party's products or finances, the disclosure of which would have the effect of causing harm to the competitive position of the person or entity from which the information is obtained.~~

c) The designation of Confidential Information or ~~Highly Confidential~~Trade Secret/Commercially Sensitive Information shall be made prior to, or contemporaneously with, the production or disclosure of such information and materials.

d) ~~e)~~ Portions of depositions of a Party's present and former officers, directors, employees, agents, experts, and representatives shall be deemed Confidential Information or ~~Highly Confidential~~Trade Secret/Commercially Sensitive Information only if it is designated as such when the deposition is taken or within thirty (30) days after receipt of the final transcript by counsel for the deposed Party. Any testimony which describes material or information which has been designated as Confidential Information or ~~Highly Confidential~~Trade Secret/Commercially Sensitive Information shall also be deemed to be designated as Confidential Information or ~~Highly Confidential~~Trade Secret/Commercially Sensitive Information as the case may be. To ensure that the Parties have the full thirty (30) business days to make the appropriate designation, all deposition transcripts will be automatically treated as ~~Highly Confidential~~Trade Secret/Commercially Sensitive Information for thirty (30) days after receipt of the final transcript by counsel for the deposed Party.

e) ~~d)~~ Where particular discovery material contains both Confidential Information, ~~Highly Confidential~~Trade Secret/Commercially Sensitive Information, and non-confidential information, only the Confidential Information and ~~Highly~~

~~Confidential~~Trade Secret/Commercially Sensitive Information are subject to the limitations on disclosure as set forth in this Order.

f) ~~e)~~ Information or documents designated as Confidential Information or Highly ~~Confidential~~Trade Secret/Commercially Sensitive Information under this Order shall not be used or disclosed by the Parties or counsel for the Parties or any persons identified in subparagraph (eg) below for any purposes whatsoever other than preparing for and conducting this Action (including appeals).

g) ~~f)~~ The Parties and counsel for the Parties shall not disclose or permit the disclosure of any materials or information designated as Confidential Information or Highly ~~Confidential~~Trade Secret/Commercially Sensitive Information under this Order to any other person or entity, except that disclosures of Confidential Information may be made only in the circumstances set forth in Paragraphs (i) through (viii) below and disclosures of Highly ~~Confidential~~Trade Secret/Commercially Sensitive Information may be made only in the circumstances set forth in Paragraphs (i) and (iii) through (viii) below.

For purposes of this Order: The term "in-house counsel" shall mean counsel or a law firm, and employees thereof, who are employed by or are an Affiliate of a Party. The term "outside counsel shall mean counsel or a law firm, and employees thereof, who are not employed by and are not an Affiliate of a Party. The term "Affiliate" shall mean, with respect to any person or entity, any other person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person or entity specified. The term "control" (including the terms

“controlling,” “controlled by” and “under common control with”) means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

- i) Disclosure may be made to outside counsel and employees of outside counsel for the Parties (not including in-house counsel ~~or other legal department employees of a Party~~), including law clerks, analysts, paralegals, secretaries, translators and clerical staff, who are assisting with the preparation and trial of the Action. Any such employee of outside counsel to whom counsel for the Parties makes a disclosure shall be provided with a copy of, and become subject to, the provisions of this Order requiring that the documents and information be held in confidence.
- ii) Disclosure may be made only to employees and Affiliates of a Party (including in-house counsel) required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed, and who execute the acknowledgement attached hereto at **Exhibit A** prior to receipt of any such material or information.
- iii) Disclosure may be made to court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents, and any interpreter, court or other shorthand reporter or typist translating, recording or transcribing testimony.
- iv) Disclosure may be made to non-party consultants, investigators, or experts

(hereinafter referred to collectively as "experts") who are expressly retained by the Parties or counsel for the Parties to assist in the preparation and trial of the action, so long as any such expert is not a current or former employee of or consultant to either Party, or a current employee of or consultant to any of the disclosing Party's competitors, and with disclosure only to the extent reasonably deemed necessary within disclosing counsel's sole discretion for such expert to perform such work.

v) Disclosure may be made to the Board, as well as personnel of the Board and all appropriate courts of appellate jurisdiction.

vi) Disclosures may be made to service contractors (such as document copy services), jury consultants and graphic artists by any attorney or individual described in sub-paragraph (i) or (ii) above, to assist in the preparation of this Action, with disclosure only to the extent reasonably deemed necessary within disclosing counsel's sole discretion to perform such work.

vii) Disclosures may be made to any person who authored and/or was an identified original recipient of the particular Confidential Information or ~~Highly Confidential~~ Trade Secret/Commercially Sensitive Information sought to be disclosed to that person, or any deponent when the examining attorney has a good faith basis to believe the deponent is aware of the particular Confidential Information or ~~Highly Confidential~~ Trade Secret/Commercially Sensitive Information sought to be disclosed.

viii) Disclosures may be made to any other person agreed-to by the producing

Party in writing.

h) ~~g)~~ Ten (10) days prior to the disclosure of any Confidential Information or ~~Highly Confidential~~ Trade Secret/Commercially Sensitive Information of the producing Party to persons described in paragraphs (iv) and (viii), above, the attorney for the receiving Party shall serve notice on the producing Party identifying the person(s) to receive such Confidential Information or ~~Highly Confidential~~ Trade Secret/Commercially Sensitive Information together with a fully executed copy of the acknowledgement attached hereto as **Exhibit B**, completed by such person. If the producing Party objects in writing to disclosure to such consultant, investigator, or expert within the ten (10) day period, no disclosure of material designated as Confidential Information or ~~Highly Confidential~~ Trade Secret/Commercially Sensitive Information may be made to the consultant, investigator, or expert. If the Parties cannot resolve the issue within five (5) days after such written objection is received by the non-objecting Party, the Party objecting to the proposed disclosure may thereupon seek, within ten (10) days of receipt of the written objection by the non-objecting Party, an appropriate order from the Board protecting against the proposed disclosure of Confidential Information or ~~Highly Confidential~~ Trade Secret/Commercially Sensitive Information to the consultant, investigator, or expert. Failure to seek an order from the Board within the time provided herein shall constitute a waiver of the objecting Party's objection. Until the Board rules on the matter, no disclosure of information or materials designated as Confidential Information or ~~Highly Confidential~~ Trade Secret/Commercially Sensitive Information shall be made to the consultant, investigator, or expert. Nothing herein shall give any

Party the right to depose or obtain any discovery from any expert disclosed herein unless such expert is disclosed pursuant to Fed. R. Civ. P. 25(a)(2).

Notwithstanding the above, no Party shall be required to serve such notice if disclosure would reveal the identity of an expert retained purely for consulting and non-testifying purposes and which would disclose the receiving Party's attorney work product, so long as any such expert is not (i) a current or former employee of or consultant to either Party, (ii) a current or former employee of or consultant to any of the disclosing Party's competitors, or (iii) a consultant to or employed in the field of dietary and nutritional supplements, and with disclosure only to the extent reasonably deemed necessary within disclosing counsel's sole discretion for such expert to perform such work. The Party who retained any such consulting and non-testifying expert that was not disclosed must provide a copy of the undertaking signed by such expert within thirty (30) days after settlement or conclusion of this proceeding, including all appeals.

i) ~~h)~~ Except as provided in subparagraph (e) above, counsel for the Parties shall keep all materials and information designated as Confidential Information and ~~Highly Confidential~~ Trade Secret/Commercially Sensitive Information which are received under this Order secure within their exclusive possession and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such information and materials as is exercised with respect to their own proprietary or highly sensitive information.

j) ~~i)~~ All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies") of Confidential Information or ~~Highly Confidential~~ Trade

Secret/Commercially Sensitive Information under this Order or any portion thereof, shall be immediately affixed with the words "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER," or "~~HIGHLY~~ ~~CONFIDENTIAL~~ TRADE SECRET/COMMERCIALLY SENSITIVE – ATTORNEYS' EYES ONLY – SUBJECT TO PROTECTIVE ORDER," to be consistent with the original, if those words do not already appear.

2) None of the provisions of this Order shall apply to the following categories of materials and information, and any Party may seek to remove the restrictions set forth herein on the ground that Confidential Information or ~~Highly Confidential~~ Trade Secret/Commercially Sensitive Information has/had been:

- a) available to the public at the time of its production hereunder;
- b) available to the public after the time of its production through no act, or failure to act, on behalf of the receiving Party, its counsel, representatives or experts;
- c) known to such receiving Party, or shown to have been independently developed by such receiving Party, prior to its production herein without use or benefit of the information;
- d) obtained outside of this action by such receiving Party from the producing Party without having been designated as Confidential Information or ~~Highly Confidential~~ Trade Secret/Commercially Sensitive Information; provided, however, that this provision does not negate any pre-existing obligation of confidentiality;
- e) obtained by such receiving Party after the time of disclosure hereunder from a third party having the right to disclose the same; or

f) previously produced, disclosed, and/or provided by the producing Party to the receiving Party or any third party without an obligation of confidentiality.

3) Confidential or Highly—ConfidentialTrade Secret/Commercially Sensitive Information Filed with the Board. To the extent that any materials or information subject to this Order (or any pleading, motion or memorandum referring to them) are proposed to be filed or are filed with the Board, those materials and information, or any portion thereof which discloses Confidential Information or Highly—ConfidentialTrade Secret/Commercially Sensitive Information, shall be filed under seal (by the filing Party) with the Board either (1) as a “Confidential Filing” made electronically through the Board’s Electronic System for Trademark Trials and Appeals (ESTTA); or (2) in an envelope marked “SEALED PURSUANT TO ORDER OF BOARD DATED _____”, together with an appropriate interim sealing motion and a statement substantially in the following form:

“This envelope, containing documents which are filed in this case by (name of party), is not to be opened or the contents thereof to be displayed or revealed except by Order of TTAB or consent of the parties to this action.”

Even if the filing Party believes that the materials or information subject to this Order are not properly classified as Confidential Information or Highly—ConfidentialTrade Secret/Commercially Sensitive Information, the filing Party shall file an appropriate interim sealing motion; provided, however, that the filing of the interim sealing motion shall be wholly without prejudice to the filing Party’s rights under paragraph of this Confidentiality-Order.

4) Party Seeking Greater Protection Must Obtain Further Order. No information or materials may be withheld from discovery on the ground that the material or information to be disclosed requires protection greater than that afforded by paragraph 1 of this Order unless the

Party claiming a need for greater protection moves for an order providing such special protection pursuant to Fed. R. Civ. P. 26(c). This Order is without prejudice to the right of any Party to seek further or additional protection of information for which the protection of this Order is not believed by such Party to be adequate. Nothing in this Order shall be deemed to bar or preclude any producing Party from seeking such additional protection, including, without limitation, an order that certain information may not be discovered at all.

5) Challenging Designation of ConfidentialityConfidential or Trade Secret/Commercially Sensitive Information. A designation of ~~confidentiality~~Confidential Information or Trade Secret/Commercially Sensitive Information under this Order may be challenged upon motion. The burden of proving the ~~confidentiality of designated information or material~~propriety of a designation under this Order remains with the designating Party ~~asserting such confidentiality~~. The process for making such an objection and for resolving the dispute shall be as follows:

- a) The objecting Party shall notify the producing Party in writing as to its objection(s) to the designations. This notice shall include, at a minimum, a specific identification of the designated material objected to as well as the reason(s) for the objection.
- b) The objecting Party shall thereafter have the burden of conferring with the producing Party claiming protection (as well as any other interested party) in a good faith effort to resolve the dispute.
- c) Failing agreement, the objecting Party may bring a noticed motion to the Board for a ruling that the discovery material or information sought to be protected as

Confidential Information or ~~Highly Confidential~~Trade Secret/Commercially Sensitive Information is not entitled to such designation. The producing Party bears the burden to establish that such discovery material is Confidential Information or ~~Highly Confidential~~Trade Secret/Commercially Sensitive Information and is entitled to such protection under this Order.

d) Notwithstanding any such challenge to Confidential Information or ~~Highly Confidential~~Trade Secret/Commercially Sensitive Information, all such material and information so designated shall be treated as such and shall be subject to the provisions of this Order until one of the following occurs: (i) the Party that designated the Confidential Information or ~~Highly Confidential~~Trade Secret/Commercially Sensitive Information withdraws such designation in writing; or (ii) the Board rules that the designation is not proper and that the designation be removed.

6) Errors in Designation. A producing Party that inadvertently fails to designate material or information pursuant to this Protective Order as Confidential Information or ~~Highly Confidential~~Trade Secret/Commercially Sensitive Information at the time of the production shall make a correction promptly, but in no event more than fifteen (15) days, after first becoming aware of such error or as soon thereafter as is commercially reasonable. Such correction and notice thereof shall be made in writing accompanied by substitute copies of each item, appropriately designated. Those individuals who reviewed the material or information prior to notice of the failure to designate by the producing Party shall, to the extent reasonably feasible, return to the producing Party or ensure destruction of all copies of such undesignated materials or information and shall honor the provisions of this Order with respect to the use and disclosure